

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
Linda DiFonzo-Sapit,)	
)	
Charging Party,)	
)	
and)	Case No. 2004-CA-0060-C
)	
Lincoln-Way Area Special Education Joint)	
Agreement District 843,)	
)	
Respondent.)	
_____)	
)	
Linda DiFonzo-Sapit,)	
)	
Charging Party,)	
)	
and)	Case No. 2004-CB-0024-C
)	
Lincoln-Way Area Support Personnel Organization,)	
)	
Respondent.)	

OPINION AND ORDER

On October 1, 2004, the Executive Director issued a Recommended Decision and Order in these cases. He determined that unfair labor practice charges filed by Linda DiFonzo-Sapit were, in part, untimely. With respect to the timely portion of DiFonzo-Sapit's charges, he determined that the evidence did not establish a prima facie case that Lincoln-Way Area Special Education Joint Agreement District 843 ("District") violated the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. ("Act"), and that DiFonzo-Sapit had provided no evidence that Lincoln-Way Area Support Personnel Organization ("Union") was in any way responsible for her termination. Therefore, he dismissed the charges.

DiFonzo-Sapit filed timely exceptions to the Executive Director's Recommended Decision and Order. The other parties did not respond to DiFonzo-Sapit's exceptions.

For the reasons in this Opinion and Order, we strike DiFonzo-Sapit's exceptions and, in the alternative, affirm the Executive Director's Recommended Decision and Order.

I.

DiFonzo-Sapit's exceptions were in the form of a letter. On the letter, she typed a "cc" with the names of the District's and the Union's representatives. She did not include the addresses of the District's and the Union's representatives together with the "cc" or provide a separate certificate of service.

Section 1100.20(e) of the Rules of the Illinois Educational Labor Relations Board ("Board"), 80 Ill. Adm. Code 1100.20(e), requires documents that are filed with the Board to be accompanied by a certificate of service. Under Section 1100.20(f) of the Board's Rules, 80 Ill. Adm. Code 1100.20(f), "[f]ailure of a party to serve a document or failure to attach a certificate of service may be grounds to strike the document, if the failure results in prejudice to another party (such as lack of notice or detrimental reliance) or demonstrates disregard of the Board's processes (such as continued noncompliance)." The Board has stated that a "cc" including only the other parties' names without their addresses would not meet the certificate of service requirement. *Cahokia Federation of Teachers, Local 1272, IFT-AFT*, Case No. 2002-CB-0001-S (IELRB, February 27, 2003).

Here, DiFonzo-Sapit provided only a "cc" on her exceptions, without a separate certificate of service. She did not include the other parties' addresses. Therefore, her exceptions do not meet the certificate of service requirement.

Assuming arguendo that the other parties were not prejudiced by DiFonzo-Sapit's failure to provide an adequate certificate of service, there is evidence of "continued noncompliance" in that there is no indication that DiFonzo-Sapit served most of the documents she provided during the investigation on the other parties. Therefore, we strike DiFonzo-Sapit's exceptions.

II.

In the alternative, we address the merits of DiFonzo-Sapit's exceptions. Her first exception relates to the Executive Director's findings of fact.

During the investigation, DiFonzo-Sapit asserted that her medical leave had been proposed by the District and that, on March 28, 2003, she had been forced to take leave. There is no indication that she asserted that the leave on which she was placed during the 2003-2004 school year was also forced upon her by the District. During the investigation, the District asserted that DiFonzo-Sapit requested leave for the first semester of the 2003-2004 school year and did not state whether DiFonzo-Sapit requested leave for the second semester of the 2003-2004

school year. The Executive Director found that DiFonzo-Sapit requested and was granted additional unpaid leave for the 2003-2004 school year.

DiFonzo-Sapit excepts to the Executive Director's finding of fact that she requested additional unpaid leave for the 2003-2004 school year. She asserts that she was forced to take leave, rather than having requested it.

As a quasi-adjudicatory body, we are required to consider only evidence in the record and cannot consider evidence not presented to the Executive Director. *Chicago School Reform Board of Trustees*, 16 PERI 1043, Case No. 99-CA-0003-C (IELRB, April 17, 2000). There is no indication that the assertion of forced leave that DiFonzo-Sapit made during the investigation extended to the 2003-2004 school year. As to the first semester of the 2003-2004 school year, DiFonzo-Sapit's assertion that her medical leave had been proposed by the District does not necessarily conflict with the District's assertion that she requested leave for that semester. As to the second semester of the 2003-2004 school year, there is no evidence that DiFonzo-Sapit requested leave.

However, DiFonzo-Sapit did not provide evidence that the District's motivation in placing her on leave for the second semester of the 2003-2004 was unlawful or that the Union was involved in a proposal that she take leave for that semester.¹ See *Board of Education, City of Peoria School District No. 150 v. IELRB*, 318 Ill.App.3d 144, 741 N.E.2d 690 (4th Dist. 2000) (requiring proof of unlawful motivation in Section 14(a)(4) and 14(a)(3) cases); *Bloom Township High School District 206 v. IELRB*, 312 Ill.App.3d 943, 728 N.E.2d 612 (1st Dist. 2000) (requiring proof of unlawful motivation in Section 14(a)(3) and certain Section 14(a)(1) cases); *Neponset Community Unit School District No. 307*, 13 PERI 1089, Case No. 96-CA-0028-C (IELRB, July 1, 1997) (requiring proof unlawful motivation in Section 14(a)(1) cases involving alleged employer retaliation for protected activity). Therefore, any error in the Executive Director's findings of fact does not affect the outcome of the case.

III.

Di-Fonzo-Sapit also excepts to what she refers to as the Executive Director's statement that she did not show additional proof of issues. The investigative record shows that, during the investigation, DiFonzo-Sapit sent a document to the investigator stating as follows:

Per our conversation of Friday morning, 4-30-04 & your additional Request for more information.....

¹ DiFonzo-Sapit asserted during the investigation that another District employee, Dennis Varel, was treated more favorably than she was. However, Varel served as DiFonzo-Sapit's Union representative. Therefore, assuming arguendo that Varel was treated more favorably, that does not show disparate treatment of employees engaging in union activity.

- 1) I am to.....summarize and write in detail, what happened with my Employer, Lincoln Way Coop #843 in relation to my 2 IDELR charges.....
 - a) Union issues
 - b) Employer issues
- 2) sign my statement & provide supportive data—you said no witness listings
--no medical stuff
- 3) Take my statements to be notarized

The Executive Director determined, as to various issues, that DiFonzo-Sapit had not presented evidence or had presented insufficient evidence.

DiFonzo-Sapit's contention that the Executive Director's Recommended Decision and Order states that she did not show additional proof of issues presumably refers to the Executive Director's determinations that DiFonzo-Sapit had not presented evidence or had presented insufficient evidence on various issues. DiFonzo-Sapit asserts that she was not asked for the additional proof.

We reject this argument. The document DiFonzo-Sapit sent to the investigator during the investigation is sufficient to show that the investigator asked her for a detailed statement of the evidence supporting her charges.

Moreover, the National Labor Relations Board has stated that "the Regional Director has extremely broad authority to determine the extent of the investigation into any unfair labor practice charge," *Opryland Hotel*, 323 NLRB 723, 727 (1997). The Executive Director of the Illinois Educational Labor Relations Board has similarly broad authority. As the Board noted in *Community Consolidated School District No. 59*, 1 PERI 1158 at VII-320, Case Nos. 85-CA-0007-C, 85-CB-0006-C (IELRB, August 14, 1985), the Board's Rule governing the investigation of unfair labor practices (Section 1120.30 of the Board's Rules, 80 Ill. Adm. Code 1120.30) does not place any minimum requirements on the scope of the investigation. The Executive Director, or his/her agents, is required only to conduct sufficient investigation to determine whether the charge states an issue of law or fact requiring the issuance of a Complaint. *Cf.* Section 15 of the Act (requiring a Complaint to be issued if the Board after investigation finds that the charge states an issue of law or fact). We find that the investigation conducted by the Executive Director's agents in this case was sufficient.

IV.

DiFonzo-Sapit also asserts in her exceptions that District Director of Special Education Rebecca Fries "denied, avoided and in fact, completely sidestepped the real reasons" for a meeting. The investigative record shows that, on or about April 14, 2003, DiFonzo-Sapit filed a grievance concerning her placement on unpaid

medical leave and questionable and unavailable supervision by her District mentor. A meeting concerning her grievance took place on or about May 1, 2003.² DiFonzo-Sapit asserted during the investigation that, during the meeting, District Director of Special Education Rebecca Fries interrupted her and sidestepped her own questionable behavior. In a letter dated May 5, 2003, Fries denied DiFonzo-Sapit's grievance. The letter mentioned DiFonzo-Sapit's concerns regarding her supervision and her mentor but did not mention her concerns regarding her leave. DiFonzo-Sapit filed her charge on April 22, 2004.

Section 15 of the Act provides that “[n]o order shall be issued upon an unfair practice occurring more than 6 months before the filing of the charge alleging the unfair labor practice.” Where the right involved arises from the Act rather than the common law, as in this case, this time limit is jurisdictional. *See Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995); *Charleston Community Unit School District No. 1 v. IELRB*, 203 Ill.App.3d 619, 561 N.E.2d 331 (4th Dist. 1990). The six-month period for filing a charge begins to run when the charging party becomes aware, or should become aware, of the actions that allegedly constitute an unfair labor practice. *Jones*; *Wapella Education Association v. IELRB*, 137 Ill.App.3d 153, 531 N.E.2d 1371 (4th Dist. 1988). The six-month period begins to run even if the charging party does not know the legal significance of the actions that allegedly violate the Act. *Jones*.

DiFonzo-Sapit's allegation that Fries sidestepped the real reasons for the grievance meeting concerns events of which DiFonzo-Sapit should have become aware in May 2003. DiFonzo-Sapit did not file her charges until April 22, 2004. Therefore, DiFonzo-Sapit's allegation on this issue is untimely and the Board does not have jurisdiction over it.

V.

In addition, DiFonzo-Sapit requests in her exceptions to dialogue about her allegations of coercion under Section 14 of the Act. We reject this request. Once an Executive Director's Recommended Decision and Order issues, the investigation is complete. The Board's Rules do not provide for further dialogue about the charge with the Executive Director or the investigatory staff.³ *See* 80 Ill. Adm. Code 1120.30. Under the Board's Rules for appeal of an Executive Director's dismissal of a charge, 80 Ill. Adm. Code 1120.30(c), there is no provision for a

² The Executive Director found that the meeting occurred on or around May 1, 2004. We correct what is apparently a typographical error.

³ A party may file a motion for reconsideration with the Executive Director. *Board of Education, West Harvey-Dixmoor School District No. 147*, 4 PERI 1146, Case No. 88-CA-0073-C (IELRB, October 20, 1988). However, the document DiFonzo-Sapit filed that contained her request for a dialogue was not addressed to the Executive Director, but to the Board's "General Council, Executive Council."

dialogue at the Board level, but only for exceptions, a response to exceptions, and supporting briefs. In fact, a dialogue at the Board level would be an impermissible ex parte contact.

VI.

DiFonzo-Sapit's exceptions are stricken on the basis that she did not provide an adequate certificate of service. In the alternative, the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charges are dismissed.

VII. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the appellate court of the judicial district in which the Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: September 13, 2005
Issued: September 26, 2005
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

/s/ Jimmie E. Robinson
Jimmie E. Robinson, Member

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